MEMORANDUM

ON

FOREST SETTLEMENTS IN INDIA.

BY

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FOREST SETTLEMENTS IN INDIA.

It is satisfactory to see from the *Indian Forester* for November 1891 that the subject of forest settlements is receiving attention, and I have thought that a few remarks suggested by the article (in the number alluded to) might not be unacceptable. In truth, the experience of Europe should teach us that no part of the work of constituting or building up *forest estates* (for this is the object of the administration) is of greater importance than that of determining all questions of right within the limits of the 'estate.' Several instances might be cited where what was once a limited grant or charter to a small cluster of houses, or a few farms, has in time grown to be a burden, swallowing up the greater part of the yield, and all the profits to the State, of an entire forest.

In forest constitution there are two sides to the question—two views in which the forest is to be regarded. In one view, the forest is a part of the earth's surface which is capable of yielding a class of produce of which timber is often, or usually, the most directly valuable, but which is not the only produce, and not always (under certain circumstances) the most economically important. From this point of view, forest management obliges us to devote our attention to such a theory and practice of sylviculture as will enable us to produce to the best advantage what we most want; and as this must be done, on the large scale, chiefly by nature—nature helped, directed, and restrained—a variety of systematized (or scientific) knowledge is indispensable. From the other point of view, that part of the country which is the site of those operations of nature and art which are working together to produce and to maintain the 'forest,' is necessarily kept apart from those other portions which are utilized in other ways. The forest 'estate' is *demarcated* in some way if it is not fenced or enclosed; and in this state it is regarded as a *piece of property*—an estate of a particular kind—no matter to whom it may belong. Regarded from this point of view, a forest is obviously a kind of property which is peculiar, owing to the inveterate tendency of the illiterate peasantry (in all countries) to regard the forest as *un*-cultivated—as not (to their eyes) the same as an area growing corn, or apples, or cherries,—it is particularly difficult to preserve it from depredations of all kinds: people *will* think that because trees, grass, and fruits of the wild trees are the produce of nature, *therefore* it is no theft to take them. It is not felt that gold and gems are just as much the produce of nature, and that the art and skill exercised in polishing and preparing them are not distinct in kind from the care

and labour that are expended on tending a forest. Special laws have to be made to protect the forests on this account.

There are of course many other special features of forest property regarded as property: for instance, an exceptional liability to uncontrollable destruction by fire; but these I do not enter into as an immediate subject for consideration.

But while this tendency is, or ought to be, confined to the ignorant and unthinking, there is another thought in the minds of the magistrates and official classes generally: they think that after all, the ordinary run of offences do no harm to the forest. It was very long before officers would realize that forest-fires did any harm. The view is held that careful forest preservation, implying protection against trees, is *only* needed for a very special and a limited class of plantation and for valuable forests of teak and other first class woods. And it is held that, for the great bulk of forests, no particular care is needed; and that (of course excepting gross acts of destruction) everybody may be left to take wood, grass, and bark, and to graze cattle freely at all times and in all places, as he pleases; and that though the forest may not, under such free-and-easy treatment, produce 'gigantic teak trees,' still it will yield, and go on yielding, all that is practically necessary. Such wholly fallacious views were actually put forward by Sir T. Hope, in Council, when the Forest Act of 1878 was under discussion. The original framers of the Act* had no idea that such a use would be made of the chapter unfortunately headed "Protected Forests." Legally speaking, of course, the Act *does* speak of two classes of forest, and gives no indication (in its terms) as to where one class and where the other should be the object of Government to establish. But the framers intended that the chapter should be applied to any large area of waste or wooded land, which it would be unwise, and indeed impracticable, to declare permanent forest in too great a hurry. It was not then known how the demands of cultivation would affect large tracts of waste; what influence (for example) railways would have on the 'waste' in such places as the Central Provinces. Why the exact term 'protected forest' was made use of I do not know; but none of us who took part in the work suspected or foresaw the mischievous use that would be made of it. Indeed, when Dr. Schlich and I were deputed to Calcutta to offer advice to the Select Committee sitting on the Bill, we found that the intention of the chapter to afford temporary protection, pending the development of circumstances, was understood: the fears of the Committee were directed to the point that the enforcing of *rules* (such as section 32 contemplated) might affect rights (which we had purposely left unrestricted) in spite of our draft; the Committee were therefore bent on introducing the latter clauses of section 28 to avoid this (supposed)

* It is well known that Sir D. Brandis prepared the draft, with some assistance, from me among others, and I am well acquainted with, and in full sympathy with, Sir D. Brandis's views.

difficulty. In vain we pointed ou tthat the tracts dealt with were *not* 'forests' properly so called—that is, permanent estates finally *constituted;* and that, therefore, we did not propose to interfere with *any rights at all*—whatever they might be; we pointed out that if it were necessary to regulate *rights,* then the forest would have to be 'reserved.' The Committee (who, it is needless to say, had not among them any experts) perceived that if they added a *complete* provision for the *settlement* of rights, there would then be no real difference between 'protected'. and 'reserved' forest; so they adopted the vague general proviso for a general *record* of rights without any attempt to provide for the settlement of any disputed question, or to say what was to happen if a right was *not* recorded, as very easily might be the case. They hoped, doubtless, that *somehow* their addition would prevent the rules from operating harshly. But they never took up Sir T. Hope's line (he was not on the Committee at that time), nor did they question the views of the framers as to the proper use of the chapter. Sir T. Hope's idea that the great bulk of forests could be always left under Chapter IV, and only a few choice localities need be placed under Chapter II, was heard for the first time in his speech in Council. Had it been generally adopted at any time by the Government of India, it would have made the Act entirely inoperative for any purpose commensurate with the wants of the country. As it was, seeing we could do no good, we obtained leave to withdraw, and our subsequent exertions were all devoted to keeping the mutilated and imperfect Act from coming into force in Madras, and especially in Burma—a matter in which we were happily successful.

Thus we have two sentiments—one in the minds of the agricultural population, and one in those of the rulers—which are great difficulties. And I must at once proceed to remark that (as is usually the case with most errors however pernicious) either sentiment contains, or is connected with, a copious element of truth; and this is apt to be taken to justify the entire position. As regards the desire of the people to do as they please in all forests, there are of course a number of cases in which actual *rights* to take wood or to graze cattle exist; but there are other (and still more numerous) cases where these objects are of such vital importance to agricultural and pastoral people under the century-old systems of tillage which they have inherited that they are indispensable; and systems of forest culture *must* make provision for their supply. On the other hand—and as regards the views of Sir T. Hope—views which, in a perhaps less defined form, may influence the best officers,—it is of course true that there are different degrees of "intensity" in forest culture, and that, according as our objects differ, the necessary degree of detailed care in sylviculture may vary also, but that is the limit of the difference. Now, the majority of officers cannot get rid of the idea that, no matter how numerous or extensive the demands on a forest are, no care is needed in periodically closing any part. No unpalatable restriction need be placed on the quantity or

mode of acquiring it the *yield will go on for ever*, as long as produce is only fairly taken, and acts of mischief, distinguished from acts of mere appropriation, are repressed. The absolute fallacy of this idea, it is to be feared, will not be established till our forests are (experimentally) ruined before their eyes, if indeed (and here is the misfortune) the ruin, which is not less sure because it is slow, is not delayed beyond the ordinary official life-time of any one officer.

To this inveterate belief is, unfortunately, also to be added the intense fear of unpopularity and discontent, and the dread of the trouble involved, in making a really satisfactory enquiry into, and settlement of, the management of a forest estate—trouble, I say, not meaning that Indian officers as a rule fear work, but the staff is so small, and the pressure of general duty so heavy, that they fear that the time required would be prohibitive.

But reverting once more to the popular sentiment, it is obvious that one must come to terms with all cases of *right*. In constituting a forest which can be managed so as *permanently* to yield any class of produce (however humble), we have to make provision for the perpetual regrowth of what is taken away, and this always involves, in one form or another, the allowing of a certain time of rest: it may not even require the absolute closing of a large extent, of forest, but it essentially demands closing and rest in *some form*. And the demand is emphasized by the fact that, in a large proportion of our total forest area, the restoration of denuded or deteriorating areas is the first object. In order then to know when and how we can carry out our ideas of proper management without any interference that can be legally sustained, and in order also to know how far the public can derive the profit from the estate,* and how far that profit must go to individuals, parties or bodies, who are entitled to it not as a charity but as a *right*, we have to separate the rights of the public (*i.e.*, of the State) for those of private individuals, communities, etc. For centuries past, in those countries where the value and utility of forest properties are fully appreciated, it is understood that this process is just as essential to the permanent realization of the essential idea of an *estate* as is the demarcation which has the double object of defining the limits over which the rights of the State, the forest owner, and the rightholder (as the case may be) extend, and the limits within which the special law of forest protection, etc., is operative. It cannot be too often

* It is constantly forgotten that, by deriving a proper income or profit from its forests (while maintaining and indeed improving the capital), Government is relieving the entire population from an equivalent amount of taxation. The net yield of the Indian forests in 1889-90 was close on 73 lakhs of rupees. Had this not existed, Government would have had to raise the same amount by increased taxes. When therefore the Government officers give away large quantities of free produce, they are really making presents to certain persons *at the expense of the general taxpayer*. I do not, of course, here refer to produce taken to satisfy *established rights*, but to the much larger quantities *given* away in "concessions."

repeated that no forest is secure which is not 'constituted,' so that it can be largely taken care of and reproduced; no forest will go on yielding an undiminished supply of *anything* without some degree of cultivation and care; and in no case can the necessary degree of care, even if it is only the lowest indispensable *minimum*, be given, unless the limits of the estate are rendered certain by natural or artificial *marks*, and unless the rights of all parties concerned—the state, the villages, and all others—are fixed and definite. No doubt if a case can be found where the forest area is large, well stocked, and with conditions favourable to growth, and if the demand on it is small, it may go on very well without such precautions, because the demand on it is a mere drop in the bucket; but *such conditions do not practically exist in any of the settled and populous portions of India* where forest conservancy is of importance.

But in Europe the question of *rights* is a comparatively simple one; and the difficulties that have arisen have been almost confined to the forms of *valuation* and to questions of defining rights where they were originally granted in vague terms, such as grazing for the '*cattle of a farm*,' firewood for the hearths of a family settlement, and the like. The rights themselves were almost always based on ancient charters and grants, or at best on a definite legally prescriptive exercise. They were always 'real' rights as the lawyers call them, that is to say, they were always attached to some 'dominant' estate—a house, a cultivated farm, a school, a hospital, etc.—for the use of which the right was created. Every right is therefore capable of direct legal proof and of being definitely dealt with on well-known principles of law. Moreover, in a more advanced state of social life and occupation, it has become more and more easy to alter an occupation that could not be continued if a forest right was taken away. If a grazing right was incompatible with the due maintenance of a forest, no hesitation was felt in buying it out, or in making a grant of land equal in value to the right, in either case valuing the right by calculating the money equivalent of a year's exercise, and making the total or capital value to be a certain number of years' purchase of the annual value. All these methods and rules have been in the course of time fixed by law. The man must then give up his cattle that he could not graze, and either take to cultivating the land grant, or to buying fodder or leasing a grazing with the compensation-money. Or again, if he has a number of goats which could not be allowed in the forest, the compensation grant would enable him to turn to some other means of making a livelihood.* In India we have a very different state of things: to take the latter question first (as the shortest and simplest), the conditions of life do not enable people readily to turn to a new

* I do not mean that this is *always* the case. Indispensable forest rights are known in Europe as they are in India, but the possibility of a change is much greater in Europe.

occupation, or to modify their methods of agriculture. If you expropriate a right of 'ráb,' or of getting *humus* manure from a forest, people do not know how to cultivate in another way, nor can they procure artificial or natural manure of another kind with the money offered. The man who lives by his goats cannot go and change his life by establishing a market garden on the plot of land you have awarded him in extinction of his grazing rights; nor if you offer him in a capitalized sum—twenty times (say) the annual cost of grazing for 100 goats,—can he employ the money in starting himself in a shop or in some trade. These possibilities of adaptation must come slowly with the general progress of the people; but at the same time they are not nearly enough considered, nor are efforts made to make a beginning when they usefully might be.* They would require patience and skill, and, above all, a steady view of the importance of the result, and a determination not to fail. So far as to one of the difficulties; that first stated must now be reverted to. The principal feature to be noted will already have occurred to my readers. We have only a very few instances—quite infinitesimal in number compared to the entire number of cases demanding consideration—where a definite grant, charter, or even a permission recorded at some early land revenue settlement or otherwise granted in writing by a Government official, is in existence. But rights may be also 'prescriptive,' that is to say, it is a matter of common law, which in principle we may take for granted, that where a person has, for a certain number of years, openly, peaceably, and as of right, *i.e.*, not by stealth, by violence and lawlessness, or by tacit or express permission and sufferance, exercised the practice of taking one part of the produce of a forest, he will be held to have acquired a *right* to that, provided the exercise (besides the above conditions) is not a matter of destruction, that is to say, is not one which continually threatens the very existence of the estate which is destined to bear it in perpetuity. It is also a necessary corollary of such a principle of law that, where the practice is indefinite, it can be rendered definite, and that it can be regulated so that its exercise should not interfere with a fair enjoyment of the property otherwise. I expressly, in this paper, *omit reference to the case of the limitation* of rights where they are beyond the yield-power of the 'servient' forest to supply. At

* A glaring instance is afforded by the case of the range of low hills in the Hushyárpur district of the Punjab. No educated forester doubts for a moment that these barren and useless wastes with their "chos" or sand torrents, causing the loss of thousands of rupees annually, could be 'afforested' and restored. Yet for years this work has been neglected, and the most unsubstantial difficulties allowed to be raised for fear of the discontent of a limited number of Gujar hamlets, the inhabitants of which still continue to keep some wretched cattle which, by consuming every root and blade that appears above the ground in the rains, prevents the restoration of any kind of vegetation. There is no earthly reason, if the matter were *seriously faced*, why the cattle should not be bought up, and the Gujar otherwise provided for.

any rate, the legal authorities have the full right to determine, by legislation, on what principle an undefined right shall be made definite and its exercise regulated. And this is obvious, because not only might an undefined right go on growing till its obvious original extent was far exceeded, and the entire value of the forest be swallowed up,* but also because an indefinite right always leads to disputes, which may be as injurious to the right-holder as they are to the forest owner; and, lastly, even defined rights must be regulated fairly and equitably in their exercise, because forest management of *any* useful kind, even the *minimum* before spoken of, becomes impossible whenever indefinite and unregulated rights are numerous. It goes without saying that wherever rights are most numerous, or, in other words, when the forest produce gained by them is most eagerly sought for and most necessary, then it is of the greatest importance that the supply should never fail, *and therefore* that the forest should be so managed or 'cultivated' as to secure the continuance of the supply. This proposition can only be doubted by those who still have the lurking belief above alluded to, that (because forest destruction by overworking is a slow process) forests will *always go on* yielding at least common grazing and small wood without any destruction, except that of breaking up the ground for tillage or wholesale clearing by a fuel contractor.

Now, in India, laws defining the rules of prescriptive right are things of comparatively recent date. There have been 'Easements' Acts before 1871, but for practical purposes the Act IX of that year may be taken as the first detailed law. But then it only dealt with that particular class of rights in English law which are called 'Easements,'† and these only covered a very small portion of the right affecting forests: more indeed concerned with rights-of-way, the use of water, to the flow of drainage, etc., if not the rights of light and air and of 'lateral support,' but the entire class of *rights to produce*, such as wood, fuel, grass, grazing, surface soil, etc., were ignored. It was not till Act XV of 1877 that the law was enlarged so as to include among the rights which can be acquired by enjoying them "peaceably as an easement, and as of right, without interruption, for 20 years," that large class which are in fact our ordinary 'forest rights.' The change was effected by enlarging the definition of 'easement' so as to include

* I allude to such cases as the well-known instance where a right of firewood for a *factory* (then a small one, consuming a very limited quantity) had been granted by charter. In after-years the factory grew to be an immense establishment requiring thousands of tons of wood.

† In English law, "easements" were rights which did not imply (generally speaking, for there were some awkward exceptions which I cannot go into) taking away produce or part of the property bearing the right. They consisted in the access of light and air, in the right to receive, or not to receive, drippings of rain and flow of drainage, the use of water, the right of support, *i.e.*, of any house by your existing wall, or of any beam let into your wall or of any wall, by your not digging out the soil adjoining, etc. They did not include rights to graze, cut wood, etc. There was a 'right of common,' a *profit á prendre*, etc.

in it "a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing in, or attached to, or subsisting upon, the land of another." It has been held by the High Court of Calcutta* that the provisions of section 26, etc., are not exhaustive, *i.e.*, that though they formally concede the title to a right that has been exercised for 20 years in the manner stated, they do not imply that a right cannot be acquired otherwise, or cannot exist upon any other terms, and, in the case in question, the Court conceded a right where the circumstances seemed to justify it, though the precise terms of section 26 were not complied with.

This ruling has an important bearing on our work, because it acknowledges an unwritten law of 'equity and good conscience,' or a common law based on general principles, or something of the kind, *in addition* to the formal enactment in section 26.

Now, in most Indian provinces, if we review the history of the past—and obscure as that often is, there is no reasonable doubt about *this* feature of it—we shall very rarely be able to find any—even the oldest and most necessary—'right' of individuals or village bodies which strictly or at all comply legally with the terms of section 26. Grazing and wood-cutting, for instance, have been exercised, without any limit other than the wants of the people, for certainly much more than 20 years (exempt of taxes, and this is not without importance in the case of the many villages that have only come into existence within the last 20 years, on the edge of the 'waste' or forest): the exercise has been open and peaceable; but was it "as an easement," *i.e.*, as a *right* (of the kind defined), a right, not something permitted, not something which a landlord, which a State officer or some other authority, could in a moment put a stop to? The answer must be—certainly not. I pass over the question whether in truth a *right* can be said to exist if it is not recognized definitely in "common" or "written" law, and if it is not *enforceable* in courts of justice. I do not want to go into any refinements or speculations. But what was the state of the land question in the past? In later days, from about the decline of the Mogul Empire, and when the deputy governors of provinces began to set up as independent 'Nawabs,' and when the Mahrátta chiefs seized on their dominions—say about the beginning of the 17th century,—† it is a matter quite beyond

* I think it may have been some other High Court. I cannot put my hand on the reference, but it can easily be found in a digest or in one of the annotated editions of the "Limitation Act."

† The Native Chiefs of Indore and all other States, as far as I know, do so still. In my forthcoming work on the *Land Systems of British India* (3 Vols., Clarendon Press, Oxford), Vol. I, page 230, I have given full reasons for thinking that the ruler did not at first, but only in later days, in the pride of conquest and in asserting independence, claim to be owner of all land whatever.

question that the ruler claimed to be the owner of every acre of land in his dominions. But even before that there never was a time when the 'waste' and uncleared or forest land was not the property of the ruler, and *this* right, at least, passed on to, and was accepted by, the British Government. The ruler could make, and did make, grants of waste or unoccupied land for reclamation and settlement, or, if he pleased, he kept it for his hunting-ground (witness the Mahráttá 'Rámná' or hunting-ground and the jungles in Ajmere, Rájputana and the Punjab, kept by Ranjit Singh, and other instances). Doubtless, in early days, neither ruler nor his officers required much in the way of formal permission to colonize and cultivate waste; they were only too glad to see it done, because in time the land revenue (taken in grain) would be thus augmented. The power of the State or the ruler to make a grant of jungle land was never doubtful; and if it chanced that any people or villages cut wood in the jungle granted, or grazed their cattle there, they would simply have to go on the grant being issued. In short, every kind of forest-user, grazing, etc., was so exercised that directly the land was wanted it had to be given up. It was then purely a question of sufferance or toleration of a practice which (until a grant of the land was thought of) no ruler cared about or thought of interfering with. How far such a continuance of practices in any way corresponds to the terms of section 26 I leave the reader to judge. And there is another matter to be borne in mind. When rights in land were definitely adjusted at the first (British) land-revenue settlements, the reader is aware that (from the point of view of land interest) these settlements all came under one of two general classes—either (1) an *estate* is dealt with as a whole, whether that estate belongs to one considerable landlord (as in Bengal or Oudh) or to a joint body of village propietors (Punjab, N.-W.P., C. P.); or (2) there is no landlord estate or joint body owning an entire village, but each field or holding is individually dealt with (raiyatwárí settlements, Bombay, Berar, Madras, and those of Assam, Burma, etc, which are on the same general principle). Now, in the former case, *either* all the adjacent waste and forest was made over to the estate, or village as in Bengal and most of the N.-W. P., and only remote forest tracts, hill ranges, etc., remained as Government waste, *or*, the waste being abundant, some rule was made allotting to each village or other group a considerable area of 'waste,' usually on some rule of "do chendá," *i.e.*, giving waste equal to twice the cultivated area. This was done in the Punjab, C. P., and something like it in Jhansi, Dehra Dún, etc. There are special cases of hill districts (Kumaon, Kulu, Kangra, etc.) where no such arrangement is made; but putting them aside, it is obvious that as the villagers, etc., mostly cut wood, grazed, etc., in the area near the village, a large number of forest rights (I do not say all) were satisfied and provided for by giving over, absolutely, to the village or estate the grounds that supplied them. If the people have chosen to break up

those grounds and put them all to other uses, that is *their* business; they could not raise the plea of having (on this ground) any *rights* (in any possible legal sense) in other areas. But this does not apply to settlements, in name or in principle, 'raiyatwárí': there the 'waste' numbers were all kept in the hands of Government, except such as under the names of kúran, bábul-ban, ramná, urudvé, grazing-grounds, etc., were reserved for *use* of the village, though remaining Government property, and in some cases allotments for 'ráb,' 'warkas numbers' bané (in Coorg), etc., have been specially provided. Still there are a considerable number of cases where the arrangements made, or the want of suitable arrangements, left it desirable to make provision for certain wants: perhaps the village jungle gave grass and brushwood, but did not contain material for agricultural implements, still less for house-building; and other examples will occur. Now, the framers of the Forest Law were in this difficulty—it was impossible, under the then existing condition of feeling about forests, to introduce into the Act any complete details about forest rights such as are understood in Europe; and yet it was felt that the definition of section 26 in the Limitation Law would not exhaust the subject, nor would the wider ruling of court alluded to (though framed long after) cover the case, because, however the Court may have extended its meaning, it is impossible not to suppose that it intended to make the recognition of right depend on *some* intelligible and limited principle of unwritten or general law borrowed from England or elsewhere: and if it is historically correct that no '*rights*' were ever exercised as of *right, i.e.*, the villager would have no redress in a court if he were told that the land where he grazed his cows had been granted to a jágírdár and he must clear out, still it could be fairly argued that, as a *matter of custom*, provision did in some way or other exist for the villages to get what they wanted. Local governors in making grants and urging on the extension of clearance for cultivation would practically respect the lands which were known to be used by certain already established villages or estates if for no other reason than this, that to interfere with such custom would be to cripple the villages, endanger the health of the cattle, and so endanger the share in the harvest which then represented the land revenue. While, then, it is important to remember how many such customary rights *have* been provided for, and how little right any one has to press any ground of *legal* right, still, I do not think it would be fair, as a principle, in forest settlements, to judge of claims on any other standard than the following:—

(1) That the village is an old established one—so that *custom* has had time to be established, and that provision was not made for its wants by an allotment of waste land, and that a long established and definite custom to take from such and such forests certain produce, or to graze in certain localities, is fairly and equitably apparent.

(2) That the produce to be supplied is really necessary..

(3) That it is for the use of the people themselves and not for sale (this is provided by law). There are special cases where certain tribes have been accustomed to collect for sale certain objects, usually minor forest produce: there need be no objection to recognizing this (Forest Act, section 13, last clause).

Mere hardship, perhaps occasioned by the people's own act, cannot be allowed *in the first instance, i.e.*, in judging of the question of the existence of a *right* to be formally admitted as such. It may afterwards be a question of some concession * of which I am not now speaking.

(4) It is essential to recognise the *right*, so that in future it may not grow to dimensions unforeseen. It is just possible to provide in the law that, after the date of declaration, no new rights should grow up, unless for special reasons they were formally *granted* or contracted for *in writing* by the Government (section 22). But if a right which now exists, say, for fuel for 20 hearths, is so put down as to allow it to grow to fuel (perhaps) for 200 hearths, it is obvious that 180 of them will constitute practically newly-grown rights which it was the express object of the Forest Act to prevent.

There is no possible hardship in such a case. If newcomers settle in a village, the fact that they will not have rights such as the older ones had is, or should be, known to them, and is one of the conditions under which they settle, just as much as is any one of the other local circumstances limiting their enjoyment.

It was extremely difficult in 1878 to get the authorities to agree to a complete measure, nor indeed were the framers of the Act able then to say what it would be best to enact: some years of experience were needed. But a Forest Act passed under such circumstances ought to have been thoroughly revised after some years, and it is much to be regretted that our efforts to get a proper revision have been unavailing, and that a wretched patchwork in the shape of an Amending Act (which really does nothing for the main bases of forest settlement) was all that could be had.

But we must not be too ready to depair because the Act is not all that we wish it; we should rather endeavour to make the best of what we have, and, if this is intelligently done, it is surprising often to find how much better off we are than a casual or hopeless examination of existing sections would at first suggest.

It is better to use the term 'concession' for a permission to graze or collect produce where there is not a *right* recognized. The term often used, *viz.*, 'privilege' is not convenient, because in English law 'privilege' (*i.e.*, privilege of Parliament, etc.) is used, not only to signify a right, but one of a very strong and enduring kind; hence, to use it (in India) to mean a mere favour conceded would be very likely in time to lead to serious mistakes.

It should be remembered that we have (and can insist on) some very important rules, and the Appellate Court, if it does its duty, is bound to enforce them.

(*a*) No *new* right to anything whatever can be acquired: this is distinctly infringed if rights are allowed in such a matter that they grow in size and extent.

(*b*) The principle is enacted that rights are for the personal use or for the service of the person or other institution for which they are allowed: this limits the right to reasonable dimensions, and it is expressly enacted that when a person has grass, grazing, wood, fuel, etc., for his own use, or for his friends, etc., he is not at liberty to sell the produce or barter it.* These provisions fully enforced will do a great deal.

But the greatest trouble of all is the *definition* of rights: those which are allowed in nine cases out of ten will be allowed, as I have argued, on the basis of custom long established, not otherwise provided for, and really necessary. Yet such 'customs' are pretty sure to be *indefinite* as to *quantity* of wood, etc., area of grazing, *time* of exercising the right, and *mode* of exercising it.

Section 13 went as far as, at the time, was thought practicable. It does require—

(1) as to grazing—the number of cattle,
,, the kind of cattle,
,, the season of grazing;

and doubtless the "other particulars" of the section would include any specification about the locality or part of the forest to be used, which constitute the 'regulation' of the right, *i.e.*, that it is exercised in a fair manner, which, while the *right is enjoyed*, does not leave *other interests* out in the cold.

(2) Wood rights (of all kinds, *i.e.*, timber, industrial wood for ploughs, etc.), fuel and brushwood, fallen and dead wood or branches, lopping boughs, etc.—the *quantity* is to be recorded, and such 'other particulars' as the case may require.

As regard (1), how is the "number" to be ascertained? The "kind" is not so difficult, for it is only necessary to refer to past usage to show that the different households have cows, oxen or bulls, goats, buffaloes, camels or what. As to number, as the law *requires* the Settlement Officer to ascertain it, and does not prescribe a rule for doing so, it will surely be held that the number must be ascertained by any rule which is fair and equitable in

* I have already alluded to the (rare) cases where collection and sale of certain produce themselves constitute the right. That has nothing to do with what I am saying.

itself under the circumstances of each case. I need only refer to the ordinary books for the rules about cattle 'levant and couchant'—the number required to work a farm of the existing size and under the usual and long-continued method of managing it. But one simple rule could be adopted in most cases, and that is to ascertain the number of each right-holder's cattle for as many years past as may be practicable, and then to deduce an 'average number' of each kind which may be recorded as the extent of the right or number of cattle annually to be provided for.

As to 'kind,' I have only to add that great effort ought to be made to exclude goats and, of course, camels. It was not possible in 1878 to adopt the Forest Law which refuses goat-grazing, "notwithstanding all right to the contrary;" but the Indian Act contemplates—and this should never be forgotten, *first*—that the rights as they exist, *i.e.*, as the officer on judicial grounds finds he must allow, are to be recorded *and made definite; second*, that for the right so defined, it does not follow that it must be fixed on the forest as a matter of course. Section 14 distinctly requires the Settlement Officer to the *best of his ability, and* having *due* regard to the maintenance of the forest, to take *another series* of steps. Now, a forest is not *maintained* if *any* right is allowed to affect it so that it is continually deteriorating into scrub jungle or becoming barren, and never improving if it is already only scrub jungle. If, therefore, he has a right of goat-grazing to deal with, he is bound to consider, *before* he fixes it on the forest (section 14*c*), whether he cannot follow section 14*a* or *b*. I say this not because the Act in terms puts *a* or *b* before *c* in any order of preference, but because his doing so is the *only* way in which he can obey the direction of the law to have *due* regard to the 'maintenance of the forest.' This further follows from section 15, which explains what is to be done if a proper regard for the forest would veto the exercise of the right.

I will return for a moment to section 15 presently, but here pass on at once to—

(2) the case of wood rights in all their varieties and the question of *quantity*. The most civilized way is to make a regular estimate of the cubic feet of planks, rafters, or other form of timber; but that is often impossible; and indeed the rough methods of cottage-building in India render it hardly necessary. It will generally be quite easy to determine, by number of stems, the allowance of poles of a certain size, or of mature trees not above or below a certain girth; it will also be often sufficient to provide that a grant is to be issued on requisition for erection and repair of a given building after inspection, or on a fair preliminary consideration of probable requirements. The grant or order will thus specify the number of trees, the kind and size, etc.

When it is a question of small firewood and brushwood for fuel, it will probably be most practicable to fix the *area* and

locality which may be cleared regularly, with provision for each cleared strip not to be grazed over afterwards.

In collecting dead-wood, etc., the quantity is defined by the amount existing: all that is needed is to prevent people ringing or otherwise killing trees and then claiming them as 'dead.'

Lopping can be defined as to quantity by specifying the species of tree, and the height up the stem to which the removal of side branches may be carried, and a proviso that the same tree is not to be lopped oftener than once in two or three years, or whatever it is.

In mountain districts, a common tax on the forest resources arises from the fact that, by bad utilization of the timber, much more is asked for than need be. I have known whole trees to be chipped away with an adze, each to yield a single rafter or beam. Here efforts should be made to have a supply of saws on loan, and above all to establish a local depôt and give out rafters, planks, etc., in store. The officer in charge would soon learn what dimensions to cut, and, for exceptional cases, passes for standing trees would be issued. A very great deal may be done in this way. Nor would it be at all impracticable to make a beginning of a system of delivering firewood in stacks in some places.

As regards other rights, as gathering *humus* for manure, Forest Officers have the means of studying how these matters are regulated in European forests, and they should be prepared, on the basis of such knowledge adapted to local requirements and conditions, to advise the Settlement Officers as to recording the mode of exercise, especially so as to give sections of the forest soil rest in turn.

Section 15 has presented some difficulty in practice, not so much on the ground of cost, for in an important forest it is well worth the outlay, but on the grounds already indicated, namely, that money is often no equivalent (and so also a grant of land for cultivation) because the people do not know how to turn to other methods of manuring, or of keeping cattle, or whatever it is; nor are they prepared to give up one form of working for their livelihood and taking to another. But, as I said, the subject is too lightly and easily dismissed: there are many cases, for instance, in which a man might be persuaded to give up his goats and cultivate a plot of land which can be found for him.

It is seriously to be considered whether, even with the provisions we have, forest settlements might not be made much better than they are. And it is a fact, which I wish to press on the attention of public officers, that *a large number of existing forest settlements are entirely illegal*, and fail to *comply with what is now the law*. As long as people are ignorant, and Forest Officers unable to press the rights of the State, this unwholesome state of things may go on for a long time without finding any noticeable difficulty: but in forest matters the *laisser aller* policy

is of all things the worst. All experience shows that as time goes on forest property becomes more valuable, the tendency is inevitable that such property should become more sharply defined as a special and very important kind or class of property; and that the owner on one side, or the right-holder on the other, should look out for their legal rights with greater keenness. At last, questions will come into court, and judges will look into the Act, find out what it requires, and there will be serious embarrassment. All rational forest management looks to the future; it recognizes that while the present yield or income is made the most of, the future and the state of the capital stock are to be continually cared for and secured. This most obvious principle is infringed with the greatest certainty when rights are dealt with *not even up to the standard that the existing law allows*, however imperfect. I admit the imperfection; but I insist, that what *is* there is intelligible, and goes much further than is sometimes thought; and I insist that in practice the law is *not* being obeyed: this ought to be very seriously looked to or a crop of troubles in the not distant future is inevitable.

I have to add only a few words on the subject of 'concessions.' There is, of course, a great fear that because it must take time (and that is more considered, as I said, than trouble) to *define* rights, some officers may be tempted into declining to record any rights at all, and to stave off the difficulty by representing that 'concessions' which the law does not sanction, and therefore does not place under restrictions as to definition) will do as well, and they may recommend the executing of them in a worse way, well knowing that the *withdrawal* of these when once made will easily be resisted. This is a gross injustice to the forest property of the public; and the time may come when it will prove an equal injustice to those who might have been entitled to real customary rights. For the tide may turn, the administration may be as keen about preserving forests and the rights of the State as it now is about letting them loose, and in that case concessions may be withdrawn wholesale, or with some tardy settlement which, after the lapse of time and the establishment of practices in the course of years, may be extremely disadvantageous to the persons interested.

I submit that *concessions* require as much care as *rights*, and that they should *never* be granted without definition. I would also suggest for consideration whether *all* concessions should not be by *annual* (or perhaps triennial) 'patta' or written document, which should be required to be regularly renewed without fail as long as it is intended to keep up the concessions. A diligent Forest Officer would always be able to see that this is done, by calling for and inspecting the 'patta' from time to time. Of course every such writing would be dated, and perfectly clear as to the period for which it is in force, and should, in the boldest characters, indicate that *no right* of a permanent kind is admitted or conveyed by it.

As a matter of *amount*, I may add it is high time that some definite steps should be taken to *value* in each range, division and province, the amount of forest produce—major and minor—which is annually *given away*. I do not refer to *rights:* those are not a voluntary loss to the State. I mean that being *rights*, they are not parts of the existing public property taken away and given to any one: the value to the exchequer of the forest is the estate as it is, not as it might be if unburdened by determined rights. The value of rights as such it may be desirable to estimate for general statistical purposes, but that is not the same thing. Every 'concession' not being a right is simply a present of a part of the State income given, at the cost of the treasury, to A, B, C, and D.* It may be highly useful and proper to make the present; but to *ignore* it is essentially to obscure the public accounts.

When we consider how largely forest administration in India is dependent on the fact that it pays its ways, it is nonsense to say that the State income is 73 or 74 lakhs a year, when in fact it is 73 paid into the exchequer *plus* another 73 given away in kind to private persons, villagers, etc. Nor is the fact in the least altered by the fact that the concession may be part of an inducement to colonists to settle and so to benefit the land revenue. People are often induced to cultivate by the offer of a canal cut, but no one thinks of *not showing the cost of the cut* on that account.

And I may add, in conclusion, that if a small fee (which might be in the form of an adhesive stamp) on all commission, *pattas*, or grants were required, it would be useful as a check. It would also be well if a small, even a nominal, annual rent or '*redevance*' were charged for concessions; it would emphasize the distinction between a concession and right; and it would greatly help in the record of the number and consequent valuation of concessions, the fees, etc., realized being *part* of the value to be recorded.

B. H. BADEN POWELL.

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* This might be said practically to be not the case when the produce is given to a few local residents, which produce *could* not be otherwise sold, exported, or utilized; but such cases are rare.

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